



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1154]

Certain Child Carriers and Components Thereof

Commission Determination to Review in Part a Final Initial Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the “Commission”) has determined to review in part, and on review, to affirm, the final initial determination (“FID”) of the administrative law judge (“ALJ”) finding no violation of section 337 of the Tariff Act of 1930, as amended (“section 337”), in connection with the asserted patent. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, DC 20436, telephone (202) 205-3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 10, 2019, based on a complaint filed by LILLEbaby LLC of Golden, Colorado

("LILLEbaby"). 84 FR 14393-94 (April 10, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, in the sale for importation, or the sale within the United States after importation of certain child carriers and components thereof, by reason of the infringement of certain claims of U.S. Patent Nos. 8,172,116 ("the '116 patent") and 8,424,732 ("the '732 patent"). *Id.* The notice of investigation names twenty-seven respondents, including The Ergo Baby Carrier Inc. of Los Angeles, CA ("Ergo"); Blue Box OpCo LLC d/b/a Infantino of San Diego, CA ("Infantino"); Baby Tula LLC a/k/a New Baby Tula LLC of San Diego, CA ("Baby Tula"); BabyBjorn AB of Lanna, Sweden and BabyBjorn Inc. of New York, NY; BabySwede LLC of Cleveland, OH; Boba Inc. d/b/a Beco Baby Carrier of Boulder, CO; ByKay BV of Wijchen, The Netherlands ("ByKay"); Artsana USA, Inc. f/k/a Chicco USA Inc. of Lancaster, PA; Cybex GmbH of Bayreuth, Germany; Columbus Trading Partners USA, Inc. of Boston, MA; Jonobaby Babytragen of Potsdam, Germany ("Jonobaby"); Mountain Buggy USA a/k/a Phil & Teds USA Inc. of Fort Collins, CO; Stokke AS of Alesund, Norway and Stokke LLC of Stamford, CT; Quanzhou Mingrui Bags Co. Ltd. of Quanzhou, China ("Mingrui"); Britax Child Safety, Inc. of Fort Mill, SC; and Wuxi Kangarouse Trading Co. Ltd. Enterprises d/b/a Kangarouse of Wuxi, China; Kokadi GmbH & Co. KG of Munich, Germany; Minimonkey BV of Amsterdam, The Netherlands; Soul US Inc. of Bangalore, India; Isara, Deneris Trade SRL of Floresti, Romania; Lenny Lamb Sp. Zo.o. Sp. K of Warsaw, Poland; L'Echarpe Porte Bonheur, Inc. d/b/a Chimparoo of Boucherville, Canada; Tingtao Sunveno Co., Ltd. of Shandong, China; Jing Jiang Dimarco Packaging & Gifts Co. of Jingjiang Jiangsu, China; and Jiangsu Matrix Textile Co., Ltd. of Jingjiang, Jiangsu, China (collectively, "Defaulting Respondents"). *Id.* The Office of Unfair Import Investigations ("OUII") is also named as a party. *Id.*

The Commission terminated eleven participating respondents from the investigation based upon settlement or consent order. Order No. 12 (May 30, 2019), *not rev'd*, Notice (June 18, 2019); Order No. 17 (July 18, 2019), *not rev'd*, Notice (Aug. 12, 2019); Order No. 18 (July 18, 2019), *not rev'd*, Notice (Aug. 12, 2019); Order No. 21 (Aug. 13, 2019), *not rev'd*, Notice (Sept. 13, 2019); Order No. 22 (Aug. 23, 2019), *not rev'd*, Notice (Sept. 17, 2019); Order No. 23 (Aug. 29, 2019), *not rev'd*, Notice (Sept. 17, 2019); Order No. 25 (Sept. 6, 2019), *not rev'd*, Notice (Oct. 1, 2019); Order No. 33 (Nov. 9, 2019), *not rev'd*, Notice (Dec. 18, 2019). The Commission found ten non-participating Defaulting Respondents in default. Order No. 38 (Dec. 3, 2019), *not rev'd*, Notice (Dec. 20, 2019). For one non-participating respondent, Mingrui, the ALJ denied LILLEbaby's motion to show cause as to why that respondent should not be held in default due to LILLEbaby's failure to show adequate service. Order No. 29 (Oct. 28, 2019).

On January 30, 2020, LILLEbaby filed a motion to terminate respondents Jonobaby and ByKay on the basis of settlement. The subject FID grants the pending motion. *See* FID. The remaining respondents are Baby Tula, Ergo, Infantino (collectively, "Active Respondents"), and Mingrui.

The Commission terminated the '732 patent from the investigation as to all respondents based on LILLEbaby's partial withdrawal of the complaint. Order No. 39 (Dec. 4, 2019), *not rev'd*, Notice (Dec. 20, 2019). The Commission also terminated claims 1, 2, 5-7, 9, 11, 14-16, 19, 20, 23, 24, and 25 of the '116 patent as to all respondents based on LILLEbaby's partial withdrawal of the complaint. Order No. 31 (Nov. 12, 2019), *not rev'd*, Notice (Dec. 10, 2019); Order No. 41 (Dec. 18, 2019), *not rev'd*, Notice (Jan. 16, 2020). Claim 18 of the '116 patent remains at issue.

On November 6, 2019, Active Respondents filed a motion to terminate the investigation for alleged lack of standing by LILLEbaby.

On March 10, 2020, the ALJ issued the subject FID finding no violation of section 337 with respect to the '116 patent. *See* FID. The subject FID denies Active Respondents' motion to terminate for alleged lack of standing. *See id.* at 28. The subject FID also includes the ALJ's recommendations that, if a violation was found, then the Commission should issue a limited exclusion order and cease and desist orders as to Active Respondents.

On March 23, 2020, Active Respondents filed a contingent petition for review of the FID. On March 31, 2020, OUII filed a response to Active Respondents' petition. LILLEbaby did not file a petition for review or a response to Respondents' petition, thus abandoning all issues decided adversely to it. *See* 19 CFR 210.43(b)(4).

Having reviewed the record of this investigation, including the FID and Respondents' contingent petition, the Commission has determined to review the FID in part. Specifically, the Commission has determined to review and, on review, take no position regarding the FID's finding that claim 18 of the '116 patent is not obvious based on the prior art Hibiscus Carrier (RPX-0006) alone or in combination with the prior art Pikkolo Carrier (RPX-0005) or U.S. Patent Publ. No. 2005/0051582 (RX-0368) to Frost. The Commission has also determined to review, and on review, take no position on the FID's findings that claim 18 of the '116 patent is unenforceable for inequitable conduct during prosecution of the patent application. Further, the Commission has determined to review, and on review, take no position on the FID's findings that LILLEbaby has satisfied the economic prong of the domestic industry requirement with respect to the '116 patent under subsections 337(a)(3)(B) and (C) (19 U.S.C. 1337(a)(3)(B), (C)). The Commission has determined not to review the remainder of the FID.

Accordingly, the Commission finds no violation of section 337 based on the FID's findings that Active Respondents do not infringe claim 18 of the '116 patent, and claim 18 of the '116 patent is invalid as anticipated by and obvious in view of U.S. Patent No. 4,986,458 to Linday.

The investigation is terminated.

The Commission vote for these determinations took place on May 11, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR Part 210.

By order of the Commission.

Issued: May 11, 2020.

Lisa Barton,

Secretary to the Commission.

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